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UNITED STATES

SALIM AHMED HAMDAN

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)  
) DEFENSE REQUEST FOR  
) WITNESS ON MERITS/SENTENCING:  
) v.  
) XXXX  
)  
) 19 October 2004  
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1. Witness Request – XXXX - US. v. Hamdan.
2. XXXX is the name of the witness, we are unaware of any alias. She does not have a mailing address but is a XXXX citizen and resident of the capital city of XXX and resides with her XXXX, Mr. XXXX, another defense witness requested, at the above mentioned address and may be contacted through the International Committee for the Red Cross or through Defense Counsel. The phone number for contact with Mrs. XXXX is XXXX. We are unaware of any e-mail address for this witness. This witness speaks only Arabic with a XXXX dialect and will require the use of a translator.
3. As the XXXX of Mr. Hamdan, Mrs. XXXX has had significant personal contact with the defendant. Mrs. XXXX can testify regarding the defendant's activities in Afghanistan in 1998 through 2001. She resided with her XXXX in Afghanistan during this time frame and can testify as to his daily activities. Specifically she will testify that Mr. Hamdan did not attend a training camp, to her knowledge was not a member of al- Qaeda, and worked for Mr. Bin Laden in order to support himself and his family Further, Mrs. XXXX can testify as to the defendant's attitudes regarding Al-Qaeda, religious beliefs, characters for peacefulness and character for truthfulness.
4. Detailed Defense Counsel has spoken to Mrs. XXXX through a translator and Mrs. XXXX has verbally stated his intentions and his desire to testify on Mr. Hamdan's behalf.
5. The testimony of Mrs. XXXX is to be used for the Defense case-in-chief and sentencing.
6. Detailed Defense Counsel last spoke with Mrs. XXXX via a translator on July 24 and this communication was in person. Also, when Detailed Defense Counsel last spoke with Mrs. XXXX he stated she would be available to testify at Mr. Hamdan's trial in December.
7. Detailed Defense Counsel requests that Mrs. XXXX be present to testify on Mr. Hamdan's behalf.
8. No other witness can be called to attest to the facts known by Mrs. XXXX.
9. This is a lay witness.
10. The Defense does not submit any other matters for your consideration.

CHARLES D. SWIFT  
Lieutenant Commander, JAGC, U.S. Navy  
Detailed Military Defense Counsel  
Office of Military Commissions

UNITED STATES OF AMERICA

V.

SALIM AHMED HAMDAN

PROSECUTION RESPONSE TO  
DEFENSE REQUEST FOR  
WITNESS: XXXX

25 October 2004

The Prosecution in the above-captioned case hereby files the following response and notification of intent not to produce in accordance with paragraph 6 of POM 10. In support of this response, the Prosecution answers the Defense's Request for Witness as follows:

1. Response to paragraph 2. The Prosecution has no objections or supplements to this paragraph.
2. Response to paragraph 3. The Prosecution does not contest the content of the proffer. However, because much of the testimony will relate to second-hand knowledge and merely repeating what the Accused allegedly told her, we do feel this impacts the analysis in paragraphs 7 and 8.
3. Response to paragraph 4. The Prosecution has no objections or supplements to this paragraph.
4. Response to paragraph 5. The Prosecution has no objections or supplements to this paragraph.
5. Response to paragraph 6. The Prosecution has no objections or supplements to this paragraph.
6. Response to paragraph 7. POM 10, paragraph 4g requires the requestor to state whether they agree to an alternative to live testimony to present what is described in the synopsis, “or the reasons why such an alternative is NOT acceptable.” The POM goes on to say that “It is unnecessary to state that live testimony is better than an alternative. . .” Given the requirements of paragraph 4g, the Prosecution is perplexed that the request was found to be in compliance with POM 10 since the request doesn’t even state that live testimony is preferred. Paragraph 7 of the request simply states that the witness be present. That’s all. No mention whatsoever is made of reasons why alternatives are not acceptable as specifically required by the POM. Because the defense has not complied

with the requirements of POM 10 at this time, the Prosecution cannot take a position on the feasibility of taking this testimony by alternative methods.

7. Response to paragraph 8. The Defense states that no other witness *can* be called to attest to the facts known by this witness. This is not even internally consistent with the Defense's own submissions for two other witnesses they have requested from XXXX. Cumulative with the proffered testimony of this witness, XXXX and XXXX are also proffered to provide testimony concerning:

- a. the Accused's character for peacefulness;
- b. the Accused's character for truthfulness;
- c. the circumstances of the Accused's marriage; and
- d. the Accused's attitude towards al Qaida.

The Prosecution fully acknowledges that the Accused cannot be required to testify. However, it is misleading to state that no other witness *can* be called to attest to these same facts.

8. Response to paragraph 9. The Prosecution has no objections or supplements to this paragraph.

9. Conclusion. For the reasons mentioned above, the Prosecution requests that this witness be denied. Alternatively, the Prosecution asks that this witness, currently located in XXXX, be allowed to testify in a manner other than appearing personally.

XXXX  
Commander, U.S. Navy  
Prosecutor

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UNITED STATES OF AMERICA	)	DEFENSE REPLY TO
	)	PROSECUTION RESPONSE TO
v.	)	DEFENSE REQUEST FOR
	)	WITNESS: XXXX
SALIM AHMED HAMDAN	)	D 30
	)	
	)	28 October 2004
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The Defense in the above-captioned case hereby files the following reply and request for the production of the above witness. In support of this request, the Defense answers the Prosecution's response as follows:

1. Reply to Prosecution Response to paragraph 3. Mr. Hamdan's words and actions are directly relevant to his mental state and are tend to rebut any circumstantial or direct evidence that Mr. Hamdan had entered into an a criminal agreement with Osama Bin Laden.
2. Reply to Prosecution Response to paragraph 7. The Defense does not believe that alternative to live testimony are feasible in this case further the defense would not agree to such alternatives. The witness will offer testimony tending to rebut the core of the Prosecution's case. The Defense, however, is aware that the witness is a family member of the accused and that witness bias will undoubtedly be at issue. As such the Commissions ability to assess the witness credibility is essential to a fair proceeding
3. Reply to Prosecution Response to paragraph 8. The Prosecution mischaracterizes the Defense assertion that the witness is not cumulative. The witness is offered for unique factual testimony. The fact that portion of the witness testimony overlaps does not change this fact nor does the Prosecution's assertion that Mr. Hamdan could testify to the facts in question. Such a rule is not in keeping with Mr. Hamdan's right to present a defense. If testimony of this witness is somehow "cumulative," and therefore excludable, it would guarantee the exclusion of virtually all of the evidence being sought to be introduced by the prosecution in this trial. To infer that Mr. Hamdan's potential testimony is any way related to this issue is singularly in appropriate and demonstrates a complete absence of an understanding of judicial principals and if adopted would preclude the need for the production of any witness

4. Conclusion. For the reasons set out in it request for production of the witness and this reply, the Defense requests the production of this witness

Charles D. Swift  
Lieutenant Commander, U.S. Navy  
Detailed Defense Counsel

From: XXXX. CIV (L)

Sent: Friday, October 29, 2004 3:14 PM

To: 'Swift, Charles, LCDR, DoD OGC'; 'Neal Katyal'; XXXX. CIV (L)

Cc: XXXX, CDR, DoD OGC; Swann, Robert, COL, DoD OGC; XXXX, LtCol, DoD OGC; XXXX; XXXX, COL, DoD OGC; XXXX, Cpt, DoD OGC; XXXX; XXXX, GySgt, DoD OGC; Gunn, Will, Col, DoD OGC; Brownback, Peter E. COL (L)

Subject: United States v. Hamdan - Deferral of Decision - D30

The Presiding Officer has reviewed the witness request in D30. A decision on this request will be made at a later time but not before counsel appear at Guantanamo.

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Assistant to the Presiding Officers

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Voice: XXXX

Fax: XXXX